voting age population is 22.4 percent and the black share of the voting age population is 11.0 percent. The state has fourteen court of appeals districts, three (4th, 8th, and 13th) of which have majority Hispanic population percentages (55, 56, and 63 percent Hispanic, respectively). There are no majority black court of appeals districts. Sixty eight of the state's 396 district courts are majority minority districts; of these, thirty-seven district courts have majority Hispanic voting age population percentages, but none have majority black voting age population percentages.

Our analysis indicates that under the proposed change, it is unlikely that judicial vacancies in districts with significant Hispanic voting age and/or registered voter populations will be filled in a manner that reflects the preferences of Hispanic voters commensurate with the opportunity available to those voters if the vacancy was filled by election. The governor is elected at large, by a statewide electorate in which Hispanic voters are a minority. Because the governor's constituency is substantially different than that in districts with significant Hispanic population percentages and because voting in Texas often is polarized along racial lines, voters in these districts will not have an opportunity to participate in the selection of judges under the new system similar to the opportunity they have under the current system. Moreover, there does not appear to be any mechanism or safeguard built into the judicial appointment process to allow for input from Hispanic voters, or a consistent procedure for soliciting the minority community's views with regard to potential judicial candidates.

The judicial appointment made to the fourth court of appeals district pursuant to the Hardberger decision fully demonstrates the impact of the proposed procedure on Hispanic participation opportunities. Instead of seeking input from Hispanic voters with regard to potential judicial appointees, the governor selected an Anglo appointee who had been rejected by the majority of the voters in that district in an earlier election in favor of a Hispanic candidate. Had the vacancy been filled by election, rather than by gubernatorial appointment, Hispanic voters in the fourth court of appeals district would have had an opportunity to elect a candidate of choice rather than having a judge for the past two years appointed to that seat who was not their choice. Thus, the Angelini appointment is illustrative of the effect the proposed change may have on the participation opportunities of Hispanic voters.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); Procedures for the

Administration of Section 5, 28 C.F.R. 51.52. We recognize that the state supreme court, faced with the constitutional issues raised in the Hardberger litigation, was required to render a decision regarding the proper interpretation of state law. The state, however, has not suggested that it was prevented by the court ruling in the Hardberger litigation from providing Hispanic voters in the fourth court of appeals district meaningful input into the appointment process, which might well offset the diminution in electoral opportunity resulting from the change in vacancy filling procedure. Thus, while the state has met its burden with regard to purpose, we cannot say that the state has met its burden of showing that, in these circumstances, the change in vacancy filling procedure from election to appointment will not "lead to a retrogression in the position of . . . minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976).

In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the change in the procedure for filling prospective judicial vacancies.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither a discriminatory purpose not effect. 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the procedure for filling prospective judicial vacancies by gubernatorial appointment continues to be legally unenforceable. See Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

Finally, we note that the state may well be able to develop a procedure for filling prospective judicial vacancies that would satisfy the requirements of both the state constitution and the Voting Rights Act. In this regard, the objection we interpose today does not mean that the Voting Rights Act precludes the state from adopting a procedure for filling prospective judicial vacancies by gubernatorial appointment; our decision does mean, however, that in order to satisfy the Section 5 non-retrogression principle, any appointment procedure that is used must provide minority participation opportunities. Should the state decide to adopt a new procedure and to seek administrative review under Section 5, our staff stands ready to respond on an expedited basis.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action that the State of Texas plans to take concerning this matter. If you have any questions, you should call Zita Johnson-Betts, a Deputy Chief in the Voting Section (202-514-8690).

Sincerely,

Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

December 14, 1998

Barbara E. Roberts, Esq.
City Attorney
P.O. Box 779
Galveston, Texas 77553-0779

Dear Ms. Roberts:

This refers to amendments to the city charter that provide for a change in the method of election for the city council from six single-member districts to four single-member districts and two at large with numbered posts, a change from a plurality to a majority vote requirement, redistricting criteria and revised recall procedures for the City of Galveston in Galveston County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your response to our August 17, 1998, request for additional information on October 15, 1998.

The Attorney General does not interpose any objection to the specified recall procedures. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With regard to the remaining specified changes, we cannot come to the same conclusion. We have carefully considered the information you provided, as well as Census data, and information in our files and from other interested parties. According to 1990 Census data, the city's total population is 28 percent black and 21 percent Hispanic. Under the existing system, six councilmembers are elected from single-member districts and the mayor is elected at large. Two of the single-member districts have black population majorities and have elected black representatives to the city council. This method of election and districting plan were adopted in settlement of a vote dilution

lawsuit filed by minority residents against the city in Arceneaux v. City of Galveston, No. G-90-221 (S.D. Tex.), and received preclearance under Section 5 for use on an interim basis on April 29, 1993, and for use on a permanent basis on January 27, 1994.

Prior to the adoption of a single-member district method of election, the city sought preclearance for a method of election similar to the plan currently under review. It provided for the election of four councilmembers from single-member districts, two councilmembers elected at large by numbered position and the mayor elected at large with a plurality vote requirement. This 4-2-1 method of election was proposed as a replacement for the at-large method of election that was the subject of the vote dilution lawsuit. On December 14, 1992, the Attorney General precleared the use of a plurality vote requirement, but interposed an objection under Section 5 to the proposed 4-2-1 method of election and to the use of numbered posts for the at-large seats because the city had not met its burden under Section 5 of demonstrating the absence of a discriminatory purpose and effect. Our conclusion in this regard was premised upon a number of factors.

First, our analysis of the at-large system indicated that voting in municipal elections was racially polarized and that minority-supported candidates had very limited success under the at-large system. Second, the districting plan that accompanied the 4-2-1 method of election did not include a single district in which black or Hispanic voters constituted a majority of the population; instead, the plan included two districts in which black and Hispanic voters combined constituted a majority. The city failed, however, to provide evidence of cohesion between black and Hispanic voters in municipal elections, rendering it doubtful that either minority group under this plan would elect a candidate of choice to a council seat. Third, the city maintained its preference for the 4-2-1 plan over the opposition of the minority community and the Arceneaux plaintiffs, who favored the adoption of a six single-member district plan with two districts in which black voters would constitute a majority of the population. Fourth, the city chose to maintain two at-large positions on the city council, in addition to the mayoral seat, and to add numbered posts. Given the existence of racially polarized voting in municipal elections, we concluded that these features of the proposed electoral system would limit the ability of minority voters to elect their candidates of choice to the city council. Finally, given all of the circumstances described above, we determined that the city had not provided legitimate, nonracial justifications for its choices regarding the 4-2-1 method of election and its adoption of numbered posts. It is against this backdrop that we must view the city's current

request for preclearance of the 4-2-1 plan, with numbered posts, as well as the proposed return to the use of a majority vote requirement.

In light of the Attorney General's prior objection to virtually identical voting changes, and the requirement of Section 5 that the submitting authority carries the burden of demonstrating that proposed voting changes are free of discriminatory purpose and effect -- see 28 C.F.R. 51.52(a) -- we have examined the information provided to determine whether new factual or legal circumstances exist which would lead to the conclusion that voting changes that did not satisfy the nondiscrimination requirement of Section 5 in 1992 will satisfy the same requirement under Section 5 today. Central to our consideration of this issue is the presence today in the City of Galveston of a method of election which fairly reflects minority voting strength, a circumstance which did not exist when the 1992 objection was interposed.

Our examination of city election returns since 1991 indicates that racial bloc voting continues to play a significant role in city elections. This year's mayoral election in which the Hispanic candidate was successful appears to have been an instance where Hispanic and black voters did vote together, along with a number of Anglo crossover voters. However, this cohesion between minority voters appears to have been a departure from the norm, as evidenced by the results in other recent elections. Of particular note is the fact that the proposed majority vote requirement, had it been in effect in this year's election, could well have changed the outcome of the mayoral race since the majority of the votes cast were for candidates favored by the Anglo voting majority. We find it significant that the city has provided no information or analysis in support of the proposed changes regarding racial bloc voting or cohesiveness between black and Hispanic voters, factors which were critical in our 1992 examination of the 4-2-1 method of election and which are no less important today.

While the city council has not yet adopted a redistricting plan for the proposed method of election, we understand that three alternative plans were developed by an appointed redistricting committee and they are currently before the council. We understand that all three plans are based on 1990 Census data and that this data continues to be the most accurate available information on the city's demographics. As was the case in 1992, we are informed that none of these plans provide for a single-member district in which Hispanic persons constitute a majority of the population or more than one district in which black persons constitute a majority. If this information is correct, it would appear to confirm that the proposed method of election, under current circumstances, cannot produce an electoral system that recognizes minority voting strength as

fairly as does the current system. Therefore, the proposed 4-2-1 method of election with numbered posts for the two at-large seats and a majority vote requirement would lead to a retrogression in minority voting strength prohibited by Section 5. See Beer v. United States, 425 U.S. 130, 141 (1976)("the purpose of § 5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise"); 28 C.F.R. 51.54.

We have considered the impact of the proposed redistricting criteria on the city's ability in the future to draw districts that fairly recognize minority voting strength. Our analysis has been hampered by the lack of information from the city regarding these criteria and how they are to be interpreted and applied. For reasons that the city does not explain, these criteria place what appear to be significant restrictions on the ability of the city to draw racially fair redistricting plans. The criteria specify that city districts be drawn from north to south and that districts "be as equal as possible with only minor variations depending upon the streets selected for district boundaries." The latter criterion appears to be significantly more exacting than the plus or minus 10 percent deviation standard approved by the federal courts for local jurisdictions to satisfy the one person, one vote requirement of the Constitution. If we understand these criteria correctly, had they been in effect in 1993 they would not have permitted the existing districts to be drawn, and their future application could hamper the ability of the city to draw nonretrogressive redistricting plans in compliance with Section 5.

Although city officials and members of the charter review committee established in 1997 presumably were aware of the prior history of litigation under the Voting Rights Act and the Attorney General's 1992 objection, the information provided by the city in support of its application for preclearance of the instant changes contains remarkably little acknowledgment of these past events or their relevance to our review under Section 5 of the city's preclearance request. For example, the city council, which appointed the charter review committee, apparently provided little direction to the committee regarding factors that should be considered in proposing changes that would affect voting, such as whether its proposals complied with Section 2 of the Voting Rights Act, 42 U.S.C. 1973, and satisfied the nonretrogression standard of Section 5. In response to a specific inquiry on this subject, you informed us simply that "the Charter Review Committee did not discuss in depth the Attorney General's 1992 objection." These facts, viewed in light of the position adopted by the council before the committee began

its work that it would put before the voters any proposed charter change approved by a majority of the committee, support an inference that the council gave very little independent consideration to the serious voting rights issues implicated by the charter committee's work and the potential impact of its efforts on the political participation opportunities of minority voters.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the change in the method of election to four single-member districts and two at-large seats, the adoption of numbered posts for the at-large seats, the adoption of a majority vote requirement for the election of city officers, and the proposed redistricting criteria.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the objected-to changes continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Galveston plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Sincerely,

Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

July 16, 1999

Mr. Robert Gorsline
City Secretary
601 South First Street
Lamesa, Texas 79331

Dear Mr. Gorsline:

This refers to the deannexation by referendum of property previously annexed under Ordinance No. O-06-98, and an annexation (Ordinance No. O-05-99) for the City of Lamesa in Dawson County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your response to our April 5, 1999, request for additional information regarding the deannexation on April 27, 1999, and your submission of the 1999 annexation on May 20, 1999.

We have considered carefully the information you have provided, as well as information from the 1990 Census, information from previous submissions from the city, and information and comments from other persons.

The Attorney General does not interpose any objection to the 1999 annexation. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

We are unable to reach a similar conclusion with regard to the deannexation. The property that is the subject of the deannexation was annexed in 1998 and received Section 5 preclearance on December 8, 1998. The owner of the property

specifically sought annexation to obtain the necessary city services and rezoning which would permit the construction of a 72-unit apartment complex for occupancy by moderate to low income families. Other assisted housing for the elderly, including housing built by the same developer, already existed in this area, and had apparently been proposed and built with little accompanying controversy. We understand that this housing contains few, if any, minority residents.

According to 1990 Census data, Hispanics and blacks constituted 51 percent of the city's population. Had it not been for the deannexation by referendum, the area annexed by Ordinance No. O-06-98 and its future residents would have become part of City Council District 6, which, according to the 1990 Census, has by far the lowest percentage of minority residents (7 percent) in the city. While it is difficult to predict with certainty the racial and ethnic makeup of the future residents of the proposed housing project, the income limits for occupancy of this housing, considered in light of existing socioeconomic characteristics of the population in Lamesa and Dawson County, indicate that the future residents would more likely reflect the minority percentage of the city as a whole than the minority percentage of District 6.

It appears that elected city officials originally welcomed the request for annexation and the proposed development because of a generally recognized need for additional housing in the city.

Almost immediately, however, the annexation and the proposed development became the subject of intense opposition, led principally by residents of District 6. Opponents of the project appeared at public hearings regarding the annexation and the proposed rezoning of the property to voice their objections.

Following the city council's approval of the annexation and rezoning ordinances, the opponents presented sufficient petitions under the city's referendum procedure to force the council to repeal the ordinances or put them to a citywide vote. At the subsequent referendum election, the voters repealed the ordinances.

The minutes of public meetings and hearings and contemporaneous newspaper articles report on various statements made by the opponents of the project. We have closely examined this public record of statements made by opponents of the development for legitimate non-racial arguments why the annexation and the rezoning ordinances should not be approved. We note that a significant number of opponents' statements were based on who the proposed occupants would be, and included such

terms as "undesirables," "HUD people," "Section 8 people," and "criminal activity that could come from this project." Other opponents stated that they would not oppose the annexation if the development was for elderly housing instead of low to moderate income housing. To be sure, there were other asserted grounds for opposition which were not directed at the prospective tenants (e.g., concerns over flooding or reduced water pressure), but no information has been provided which indicates that these potential problems could not have been dealt with effectively by the city or the developer.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. Our examination of the circumstances regarding the deannexation indicates that the city has not met its burden of showing that a discriminatory purpose to exclude minority voters from taking up residence in District 6 was not a significant factor in the decision to adopt the change. Accordingly, on behalf of the Attorney General, I must object to the proposed deannexation by referendum of the property annexed under Ordinance No. O-06-98.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed deannexation neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the deannexation continues to be legally unenforceable insofar as it affects voting. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Lamesa plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), Special Section 5 Counsel in the Voting Section.

Sincerely,

Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

June 5, 2000

David Méndez, Esq.
Bickerstaff, Heath, Smiley,
Pollan, Kever & McDaniel
1700 Frost Bank Plaza
816 Congress Avenue
Austin, Texas 78701-2443

Dear Mr. Méndez:

This refers to the adoption of numbered posts for the Sealy Independent School District in Austin County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your response to our February 14, 2000, request for additional information on April 6 and June 1, 2000; supplemental information from the state was received on June 2, 2000.

We have carefully considered the information you have provided, as well as Census data, information in our files, and information and comments from other interested parties. According to the 1990 Census, 12.7 percent of the school district's total population is black and 15.9 percent is Hispanic. Since 1990, it appears that the school district has experienced growth in its overall population and in the minority share of its population. Minority students within the school district at present constitute a significant percentage of the school district's overall student enrollment (28 percent Hispanic/16 percent black).

Under the existing system, the school district elects its seven-member board of trustees on an at-large basis to three-year staggered terms of office (3-2-2). Only one minority representative, an African American, has been elected to the

school board in recent times. After two unsuccessful efforts, this individual succeeded in gaining election when she ran for office in an election year when three trustee seats were up for election. In that contest in 1992 she placed last among the three winning candidates, which was also true of her reelection in 1995. In her two unsuccessful bids for the school board, she, like other minority candidates, appears to have failed to garner sufficient white voter support to get elected under the at-large system.

In our view, the available information concerning voting patterns within the school district is not inconsistent with a pattern of racially polarized voting, although it does appear that some minority candidates in the school district and other local elections have received a level of support from white voters, as well as from minority voters, sufficient to gain election. By and large, however, this level of white voter support appears to have been reserved for a very small number of minority candidates. Most minority candidates have been unsuccessful in election contests for at-large seats on the school board, as well as for other local offices when they face white opposition. Electoral patterns such as these are typically observed in instances where voting is racially polarized.

The school district now seeks to add to its at-large electoral system a numbered post requirement that, in effect, will convert each election for a seat on the board into a separate election contest. In these separate contests for school board seats, minority-supported candidates are more likely to be pitted against white incumbents or challengers in "head-to-head" contests. Where voting is racially polarized, our experience suggests that minority-supported candidates are more likely to lose because they are unlikely to garner a majority of the votes in the bid for a single seat. Indeed, it appears that the school district's sole minority trustee may not have fared well under the proposed system, given her third place showing in the two successful bids for the board in which she faced white opposition.

The school district maintains, however, that the proposed numbered post requirement will not have a negative impact on minority electoral opportunity for at least three reasons. First, the district asserts that voting within the district is not racially polarized and numbered posts cannot adversely impact minority voters under these circumstances. Second, the district claims that minority voters will not be harmed by the implementation of numbered posts because they do not make use of the technique of "single-shot" voting under the existing system and are too small a share of the voting population to elect on their own a candidate of choice. Hence, the change to numbered posts could not worsen their political participation opportunities. Third, the district posits that the addition of

numbered posts will not harm minority voters because under the proposed system, unlike the existing system, white voters will not be able to utilize the technique of "single-shot" voting, which denies minority candidates the white votes needed to gain election under the at-large system.

With regard to the district's first assertion concerning the existence of polarized voting, we have noted above that based on the information available to us there is evidence of such a pattern of voting. We have been unable, however, to conduct a more particularized analysis of the school district's claim in this regard, given, among other things, several deficiencies in the information that has been provided. For example, election returns by voting precinct for school district contests in which minority candidates participated were not provided to us, except for the May 2000 election returns forwarded to us on June 1, 2000. And, the consolidated returns that were provided did not include in several instances the total number of voters who voted in a particular school district election, all of which is important information in the analysis of voting behavior. Finally, no information was provided for elections in which minority candidates participated for municipal offices other than for the City of Sealy.

In support of its argument regarding the absence of polarized voting, the school district relies in large part on the following elections involving minority candidates: 1) the election without opposition of a minority candidate who was first appointed to fill a vacant constable position in Precinct 4 (this candidate also happens to be the husband of the minority school board trustee); 2) the third place election and reelection of the incumbent African-American trustee, who is the only minority to ever serve on the school board; and 3) the election of a single minority candidate to the five-member city council for the City of Sealy, despite numerous unsuccessful candidacies of minority candidates in a city with a combined 1990 minority population share of 38 percent. We are not persuaded that these limited instances of minority electoral success under the circumstances noted above demonstrate the absence of polarized voting within the school district, given the lack of success generally experienced by minority candidates.

The school district's second claim is that the proposed change will not harm minority-supported candidates because minority voters do not single-shot vote and, by themselves, are too small a share of the voting population to control the outcome of an at-large election. This reasoning, however, does not fully embrace the level of minority electoral success, albeit limited, that has been achieved to date within the school district. While it does appear that under the existing at-large, staggered term election system there are limited opportunities for the effective use of single-shot voting, a candidate apparently preferred by

the minority community has gained election to the school board with significant crossover from white voters. This minority candidate ran successfully only in years in which there were three seats up for election and, even then, placed last among the winning candidates when there was white opposition. As noted earlier, it is questionable whether this minority candidate, the incumbent African-American trustee, could continue under the proposed system to be elected to the school board because she would have to place first in contests in which there was white opposition.

Finally, as we understand it, the school district's third claim is that the proposed change may actually benefit minority voters by ensuring that white voters will not be able to "single-shot" vote for a white candidate and thereby deny minority candidates the white votes they need in order to win election. Our experience analysing the impact of electoral devices such as the proposed numbered posts requirement does not support this conclusion. It is true that the implementation of numbered posts will prevent any use of the technique of "single-shot" voting. In our experience, however, "single-shot" voting is generally utilized by minority voters to boost the effect of their support for a preferred candidate in multi-seat, at-large election contests where voting is racially polarized, rather than by white voters who are a majority of the electorate; no information provided to us during our review of the instant submission would require a different conclusion. Implicit in this claim by the school district, however, is the view that when white voters limit their vote to a single candidate, they are more likely to choose a white rather than a minority candidate. This observation is consistent with our experience and adds to the evidence indicating that in single-seat contests for the school board, minority-supported candidates are unlikely to place first ahead of white candidates, and, indeed, are in a worse position than under the existing at-large system to elect candidates of their choice.

Under these circumstances, I am unable to conclude as I must under Section 5 that the school district has met its burden of demonstrating that the submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). Therefore, on behalf of the Attorney General, I must object to the addition of numbered posts for the Sealy Independent School District.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you

may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the use of numbered posts by the school district continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Sealy Independent School District plans to take concerning this matter. If you have any questions, you should call Deanne B. Ross (202-514-6331), an attorney in the Voting Section.

Sincerely,

Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

P.O. Box 65808
Washington, D.C. 20035-5808

Telephone (202) 514-2151

September 24, 2001

Cheryl T. Mehl, Esq.
Schwartz & Eichelbaum
800 Brazos Street
Suite 870
Austin, Texas 78701

Dear Ms. Mehl:

This refers to the change in the method of election from single-member districts to an at-large system employing cumulative voting, its implementation schedule, and the subsequent revision of the implementation schedule as subsequently revised for the Haskell Consolidated Independent School District in Haskell, Knox, and Throckmorton Counties, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our February 5, 2001, request for additional information on July 25, and September 5, 6, 7, and 12, 2001.

We have considered carefully the information you have provided, as well as Census data, and comments and information from other interested parties. According to the 2000 Census, the Haskell Consolidated Independent School District [the district] has a population of 3,845, of whom 19.7 percent are Hispanic and 3.2 percent are black persons.

Our analysis of the district's electoral history indicates that under the current method of election, which utilizes seven single-member districts, Hispanic voters have been able to elect candidates of their choice to office in at least one district. We note that this election method resulted from the settlement of federal litigation claiming that the previous method, an at-large

system with staggered terms, violated Section 2 of the Voting Rights Act. League of United Latin American Citizens, District 5 LULAC v. Haskell Consolidated Independent School Districts, No. 193-CV-0178(C) (N.D. Tex. Oct. 21, 1994). The school district implemented the single-member district system, which contained one district with a Hispanic population majority, in 1995.

Under a cumulative voting system, voters are allocated a number of votes equal to the number of offices that are being contested at that particular election and can assign all of their votes to one candidate. Thus, a candidate supported by voters who are a minority of the electorate can win with support from fewer voters than in a traditional at-large election. A statistical measure, known as the "threshold of exclusion," can determine the lowest percentage of support from a single group that ensures their candidate will win no matter what other voters do. This level of support is 33 percent in a two-seat race and 25 percent in a three-seat race. Thus, for Hispanic voters to elect a candidate of their choice in a three-seat contest, they must either constitute 25 percent of the electorate or be able to count on enough non-Hispanic votes to reach that threshold. The school district has conceded that it will be virtually impossible for minority voters to elect at least one candidate of their choice under the board's proposed method of election without non-Hispanic cross-over voting. Accordingly, we have examined the ability of candidates supported by the Hispanic community to attract non-Hispanic votes in past elections.

Only one Hispanic candidate had been elected to the board of trustees prior to the implementation of single-member districts in 1995. From 1981 to 1994, there were five attempts by four Hispanic candidates to win a seat on the school board. Based on the information provided by the district, in only one instance has a Hispanic candidate's vote total exceeded the threshold of exclusion. In the 1993 contest for Place 1, a Hispanic candidate's vote total exceeded the threshold by only 0.8 percentage points. Accordingly, based on the information available, it appears that candidates favored by the Hispanic community have not consistently received significant non-Hispanic cross-over voting, much less at the levels claimed by the district.

Given the demographics of the school district and apparent voting patterns within it, the jurisdiction has not carried its burden that the proposed change will not significantly reduce the ability of minority voters to elect candidates of their choice to the school board.

We have also examined the reasons proffered by the district in support of the change, such as allegedly low voter turnout during the time that it utilized single-member districts as compared to purportedly higher turnout under the at-large system. An analysis of past voter turnout information does not support the board's position. For example, in May 2001, the board claims that less than one percent of the registered voters in District 1 cast a ballot. A closer examination indicates that the candidate for that position was unopposed and the election would have been cancelled, with the candidate being sworn into office, had there not been another office on the ballot being contested.

Moreover, in both the Section 5 submission and at the February 10, 2000, public hearing, school board officials claimed that voter turnout was higher in at-large elections. The district cited the 1993 election, calculating that 1,465 persons voted, a 64.5 percent turnout rate, and, the 1994 election in which 1,863 persons, or 73 percent of the registered voters voted, as evidence of the need to return to at-large elections. This assertion does not withstand close scrutiny. In both of these elections, two numbered posts were up for election and a voter could vote for both posts. According to the 1993 election returns, there were 730 votes for Place I candidates and 735 votes for Place II candidates for a total of 1,465. The 1994 figure of 1,863 is the result of similar calculation. The only way to arrive at the district's numbers is to assume that every voter who cast a ballot for one post chose not to vote for the second office. We do not believe that such an assumption is warranted here.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5, 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the change to cumulative voting with staggered terms.

In its request for preclearance, the district notes that if, in fact, the change is retrogressive, individuals in the minority community would be free either to petition the board to change the method of election or to institute further litigation. This suggestion ignores the essential purpose of Section 5, which is to ensure that gains achieved by minority voters not be subverted by retrogressive changes. Accordingly, we can not accede to the

district's request.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the changes continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

The Attorney General will make no determination regarding the submitted implementation schedule because it is dependant upon the objected to change in the method of election.

We understand that the school district employs Spanish language election procedures. "Spanish language election procedures" refers to such matters as the procedures for translating election-related information and materials (e.g., notices, advertisements, informational pamphlets, ballots) into Spanish (include examples of such documents), procedures for confirming the accuracy of the translations, and the procedures used to provide oral assistance or information in Spanish at polling places, early voting locations, as well as publicity in Spanish regarding the availability of Spanish language assistance. See Interpretive Guidelines: Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups, 28 C.F.R., Part 55 (copy enclosed).

Our records fail to show that this change affecting voting has been submitted to the United States District Court for the District of Columbia for judicial review or to the Attorney General for administrative review as required by Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. If our information is correct, it is necessary that this change either be brought before the District Court for the District of Columbia or submitted to the Attorney General for a determination that it does not have the purpose and will not have the effect of discriminating on account of race, color, or membership in a language minority group. Changes which affect voting are legally unenforceable without Section 5 preclearance. Clark v. Roemer, 500 U.S. 646 (1991); Procedures for the Administration of Section 5 (28 C.F.R. 51.10).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Haskell Consolidated Independent School District plans to take concerning this matter. If you have any questions, you should call Ms. Judybeth Greene (202-616-2350), an attorney in the Voting Section. Refer to File No. 2001-2924 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

Ralph F. Boyd, Jr.
Assistant Attorney General
Civil Rights Division

Enclosure

U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

Wallace Shaw, Esquire
P.O. Box 3073
Freeport, Texas 77542-1273

AUG 12 2002

Dear Mr. Shaw:

This refers to the procedures for conducting the May 4, 2002, special city charter amendment election and the change in the method of electing city council members from districts to at large for the City of Freeport in Brazoria County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our May 14, 2002, request for additional information through July 31, 2002.

With regard to the special election, the Attorney General does not interpose any objection to the specified change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

As to the change to at-large elections with numbered positions, we have carefully considered the information you have provided, as well as census data, comments and information from other interested parties, and other information, including the city's previous submission of the adoption of the current districting system for the election of council members. Based on our analysis of the information you have provided, on behalf of the Attorney General, I am compelled to object to the submitted change in the method of election.

According to the 2000 Census, the city has a total population of 12,708, of whom 6,614 (52.0 percent) are Hispanic and 1,696 (13.3 percent) are black persons. Hispanic residents comprise 47.3 percent, and black residents 12.3 percent, of the city's voting age population. Approximately 29 percent of the city's registered voters are Spanish-surnamed individuals.

Until 1992, the city elected its four-member council on an at-large basis. In that year it began to use the single-member district system, which it had adopted as part of a settlement of voting rights litigation challenging the at-large system. Under the subsequent single-member district method of election, minority voters have demonstrated the ability to elect candidates of choice in at least two districts, Wards A and D. The city now proposes to reinstitute the at-large method of election. Our analysis shows that the change will have a retrogressive effect on the ability of minority voters to elect a candidate of their choice.

Elections in the city are marked by a pattern of racially polarized voting. Under the city's previous use of at-large elections, no Hispanic-preferred candidates were successful until 1990. In that election, one such candidate narrowly won office when several Anglo-supported candidates split the vote. In contrast, a Hispanic-preferred candidate won over significant Anglo opposition in 1992 in the first election held under the single-member district system. Since then, three other minority-preferred candidates have been successful in their wards. However, minority voters remain unable to elect their candidates of choice in municipal at-large elections. Thus, a return to an electoral system where all council offices are elected on an at-large basis will result in a retrogression in their ability to exercise the electoral franchise that they enjoy currently. A voting change has a discriminatory effect if it will lead to a retrogression in the position of members of a racial or language minority group (i.e., will make members of such a group worse off than they had been before the change) with respect to their opportunity to exercise the electoral franchise effectively. Reno v. Bossier Parish School Board, 528 U.S. 320, 328 (2000); Beer v. United States, 425 U.S. 130, 140-42 (1976).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the change in the method of election.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change neither has the purpose nor will have the effect of denying or abridging the

right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the submitted change continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Freeport plans to take concerning this matter. If you have any questions, you should call Mr. Robert Lowell (202-514-3539), an attorney in the Voting Section.

Sincerely,

J. Michael Wiggins
Acting Assistant Attorney
General

Honorable Mark White
Secretary of State
State of Texas
Capitol Station
Austin, Texas 78711

Dear Mr. Secretary:

This is in reference to S.B. 300 of 1975, voter registration procedures in the State of Texas, which was submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended in 1975. Your submission was received on October 31, 1975. Pursuant to your request we have given expedited consideration to this submission in accordance with Section 51.22 of our Section 5 guidelines (28 C.F.R. 51.22).

We have reviewed carefully the information, statistical data and other material submitted by you as well as information, comments and views provided by other interested persons. Except insofar as S.B. 300 requires a purge of all currently registered voters in Texas, the Attorney General does not interpose an objection to the changes involved. We feel a responsibility to point out, however, that Section 5 of the Voting Rights Act expressly provides that our failure to object does not bar any subsequent judicial action to enjoin the enforcement of these changes should such action become necessary.

Section 2 of S.B. 300 provides, among other things, that registrants who fail to reregister shall have their registration terminated on March 1, 1976. We recognize the State's interest in enacting legislation which promotes registration and, also, which utilizes a reasonable means of maintaining accurate registration records. However, our review of recent registration laws in Texas, e.g., the poll tax, annual registration, reregistration (S.B. 51 of 1971), in conjunction with our evaluation of S.B. 300, illustrates that the citizens of Texas have experienced several registration procedures within a ten-year period.

Under Section 5 of the Voting Rights Act the burden falls upon the submitting authority to demonstrate that voting changes, such as those here under submission, not only do not have a prohibited discriminatory purpose but will not have such an effect. Thus, as set forth in his Procedures For the Administration of Section 5 of the Voting Rights Act of 1965, Section 51.19 (28 C.F.R. 51.19), the Attorney General will refrain from objecting only if he is satisfied that the proposed change does not have the prohibited purpose or effect. If he is persuaded to the contrary or if he cannot satisfy himself that the change is without discriminatory purpose or effect, the guidelines state that the Attorney General will object.

Our analysis has revealed nothing to suggest a discriminatory purpose to the purge involved here. In addition, the State's proposals for minimizing the adverse effect of the reregistration are commendable. However, we cannot conclude that the effect of the total purge to initiate the reregistration program will not be discriminatory in a prohibited way.

With regard to cognizable minority groups in Texas, namely, blacks and Mexican-Americans, a study of their historical voting problems and a review of statistical data, including that relating to literacy, disclose that a total voter registration purge under existing circumstances may have a discriminatory effect on their voting rights. Comments from interested parties, as well as our own investigation, indicate that a substantial number of minority registrants may be confused, unable to comply with the statutory registration requirements of Section 2, or only able to comply with substantial difficulty. Moreover, representations have been made to this office that a requirement that everyone register anew, on the heels of registration difficulties experienced in the past, could cause significant frustration and result in creating voter apathy among minority citizens, thus, erasing the gains already accomplished in registering minority voters.

We have reviewed carefully the justifications submitted by the State in an effort to satisfy the State's burden of proof that the purge in question does not have the purpose or effect of denying or abridging voting rights on the basis of race or language minority status. We also have closely scrutinized the nature of the State's interest in implementing a statewide purge to determine whether it is compelling and whether alternative means of accomplishing its purpose are available. Dunn v. Blumstein, 405 U.S. 330 (1972). Under all the circumstances involved, we are unable to conclude that a total purge is necessary to achieve the State's purpose. Likewise, we are unable to conclude, as we must under the Voting Rights Act, that implementation

of such a purge in Texas will not have the effect of discriminating on account of race or color and language minority status. For that reason, I must, on behalf of the Attorney General, interpose an objection to the implementation of the purge requirement of Section 2 of S.B. 300.

Should you decide, however, to implement the reregistration without the purge requirement and can at a later date demonstrate that it did not have an adverse effect on minority voting rights, we would welcome a request for reconsideration with appropriate supporting materials (see 28 C.F.R. 51.23).

Of course, as provided for by Section 5, you have the alternative of instituting an action in the United States District Court for the District of Columbia for a declaratory judgment that the change does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. Should you decide to pursue such a course of action my staff and I will cooperate to expedite the matter in any way possible.

I am aware that there is now pending a lawsuit in the United States District Court for the Eastern District of Texas with respect to the subject matter of this submission. I am, therefore, taking the liberty of forwarding a copy of this letter to the Court.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

DJ 166-012-3
X00012

Honorable Mark White
Secretary of State of Texas
Capitol Station
Austin, Texas 78711

Dear Mr. Secretary:

This is in reference to Senate Bill 11 (1973), which was submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act. Your submission was received on November 26, 1975. While we have noted your request for expedited consideration, we have been unable to give you an earlier response to this matter.

The Attorney General does not interpose an objection to the changes contained in Senate Bill 11 except as noted below. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes.

Section 6 of Senate Bill 11 restricts the ability of political parties in Texas to hold primary elections after 1974 by requiring that a political party nominate its candidates only by convention if the party's candidate for governor in the last preceding general election received at least 2% but less than 20% of the total votes cast

for that office. Immediately prior to Senate Bill 11 no such restriction was imposed upon any political party whose candidate for governor in the last preceding election received at least 2% of the vote for that office. In fact, Section 6 of Senate Bill 11 itself allowed such a political party to conduct primaries in 1976.

Under present state law the costs to political parties of primary elections are reimbursed by the State, but the State does not reimburse political parties for the costs of conducting party conventions. The reason advanced by the state for its limitation on the primary as a vehicle for nomination by political parties in Texas is a lessening of the burdensome expense of state-financed primary elections.

According to our information, in the 1974 gubernatorial election in Texas the Democratic Party's candidate received approximately 62% of the vote, the Republican Party's candidate received approximately 38%, and approximately 6% of the vote was received by the candidate of the Raza Unida Party, a party composed predominantly of Mexican-Americans and devoted to the protection of Mexican-American interests. The Raza Unida Party accounted for under $60,000 or less than 3% of the state's total expenditure for primary elections in 1974 and, therefore, under Senate Bill 11 the only parties able to conduct primary elections in 1976 will be the two parties which combined to account for over 97% of the cost to the state of primary elections in 1974. Thus, based on these results the effect of the Section 6's restriction in 1976 and thereafter necessarily would fall on only one party, the Raza Unida, and significantly limit the opportunity for Mexican-Americans to nominate, on an equal basis with others, a candidate of their choice.

Under these circumstances we are unable to conclude that the stated purpose for the primary election restriction in Senate Bill 11 outweighs the effect of the restriction on the racially identifiable La Raza Unida, and that beginning in 1976 the provisions of Section 6 of Senate Bill 11 will not have a prohibited discriminatory effect within the meaning of Section 5 of the Voting Rights Act. Accordingly, on behalf of the Attorney General, I must object to the implementation of those provisions of Section 6 of Senate Bill 11.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these provisions neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. However, until and unless such a judgment is obtained, the provisions objected to are unenforceable.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

FEB 25 1976

Mr. Jack Skeen, Jr.
City Attorney
City of Tyler
Post Office Box 7039
Tyler, Texas 75701

Dear Mr. Skeen:

This is in response to your letter dated December 24, 1975, in which you submit annexations, a referendum to decide inter alia, the form of government in Tyler, Texas, and a reapportionment plan for the City of Tyler, Texas, to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965. Your submission was received on December 27, 1975.

The Attorney General does not interpose any objection to the annexations and the aforementioned referendum. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes.

With regard to the submitted reapportionment, we have completed our analysis and review of the change. Our analysis shows that blacks comprise 23.5% of the total population of Tyler, Texas and that Mexican-Americans comprise about 5% of the total

population, that no minority candidates have been elected to city office in Tyler, and that reasonable alternate plans could be drawn (including a seven single-member district plan), that would be more reflective of minority voting strength in Tyler.

Not insignificant to our consideration of this change is our recognition of the fact that in establishing the plan under submission the city increased the size of its governing body from five to seven members. Thus, while the determination here well might have been different had this single-member districting involved the 20% representation that the minority groups could have elected to a continued five-member council, we find it not only appropriate but necessary that we consider several factors in the context of the enlarged seven-member council. First, we are mindful that under the enlarged seven-member council the representation which the affected minorities are given a realistic chance of electing is reduced to 14%. Second, we find it logical to presume that, in the absence of evidence to the contrary, racial bloc voting exists since no minority candidate (of whom there have been several) has ever been elected to the council under the at-large system. Third, we cannot ignore the fact that the five-member system is presently under challenge in the United States District Court for the Eastern District of Texas (Square v. Halbert, C.A. No. T.Y75-54). Fourth, the city has presented no evidence of a compelling need to incorporate in its proposal an at-large feature.

Under these circumstances, therefore, the Attorney General cannot conclude, as he must under the Voting Rights Act, that the proposed reapportionment plan does not have the effect of impermissibly diluting the voting strength of protected minorities in the City of Tyler. Accordingly, I must, on behalf of the Attorney General, interpose an objection to the implementation of this plan.

Of course, you are permitted under Section 5 of the Voting Rights Act to seek a declaratory judgment in the District Court for the District of Columbia that the proposed reapportionment plan does not have the purpose, and will not have the effect of denying or abridging the right to vote on account of race or color. Until such judgment is obtained, however, the legal effect of the Attorney General's objection is to render unenforceable the legislation authorizing the proposed reapportionment.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

Department of Justice
Washington, D.C. 20530

MAR 5 1976

Mr. Joe Resweber
County Attorney
Office of the County Attorney
Harris County Courthouse
Houston, Texas 77002

Dear Mr. Resweber:

This is in reference to the 1973, 1974 and 1975 changes in the method of selecting precinct election judges in Harris County, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on January 5, 1976.

The Attorney General does not interpose any objection to the 1973 and 1974 changes. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes.

After careful consideration of the submitted changes, of supporting information and of comments from interested parties, we are unable to conclude, as we must under the Voting Rights Act, that the December 8, 1975 Commissioners' Court Order, as amended by the December 29, 1975 Order has not had and will not have a racially discriminatory purpose or effect. In the absence of information indicating that minorities are fairly represented among the precinct polling staff we are unable to conclude that the qualification that "the racial make-up of the precinct polling staff will not be affected" will not discriminatorily limit the opportunities of minorities to serve as precinct polling staff. I must, therefore, on behalf of the Attorney General, interpose an objection to this Order.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the District Court for the District of Columbia that these changes neither have the purpose nor the effect of denying or abridging the right to vote on account of race or color. However, until and unless such a judgment is obtained, the provisions objected to are unenforceable.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

MAR 9 1976

Mr. Johnnie Henderson
Superintendent
Forney Independent School District
P. O. Box 939
Forney, Texas 75126

Dear Mr. Henderson:

This is in reference to the imposition of majority vote and numbered post voting requirements in Board of Trustees' elections, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on January 9, 1976.

We have given careful consideration to the submitted changes and the supporting information as well as the data compiled by the Bureau of the Census and information and comments from interested parties. After a careful examination of these factors as well as an analysis of recent court decisions, we are unable to conclude, as we must under the Voting Rights Act, that the imposition of the majority vote and numbered post voting requirements in the context of the at-large and staggered elections for the Board of Trustees will not have a racially discriminatory effect. Recent Supreme Court decisions, to which we feel obligated to give great weight, indicate that the combination of the above features would have the effect of abridging minority voting rights. The reasoning of these recent cases is illustrated by the Supreme Court's decision in June of 1973 which held that the multi-member election system, numerical

cc: Public File (Room 920)
X1205

post and majority vote requirement of Dallas and Bexar Counties, Texas, tended to abridge minority voting power and therefore violated the Fourteenth Amendment. White v. Regester, 412 U.S. 755 (1973). See also, Whitcomb v. Chavis, 403 U.S. 124 (1971).

For the foregoing reasons, I must on behalf of the Attorney General interpose an objection to the numbered post and majority vote features mentioned above. We have reached this conclusion reluctantly because we fully understand the complexities involved in devising a plan of this nature so as to satisfy the needs of the school district and its citizens and simultaneously, to comply with the mandates of the Federal Constitution and laws. We are persuaded, however, that the Voting Rights Act compels this result.

Of course, Section 5 permits seeking approval of all changes affecting voting by the United States District Court for the District of Columbia irrespective of whether the changes have previously been submitted to the Attorney General. However, until such a judgment is rendered by that court, the legal effect of the objection by the Attorney General is to render the changes in question legally unenforceable.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

MAR 10 1976

Mr. Holmen Liliensteen
City Attorney
City of Texas City
P. O. Drawer 2608
Texas City, Texas 77590

Dear Mr. Liliensteen:

This is in reference to the numbered post provision governing the election of City Commissioners in Texas City, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965. Your submission was completed on February 2, 1976. In accordance with your request expedited consideration has been given to this submission pursuant to the procedural guidelines for the administration of Section 5 (28 C.F.R. 51.22).

After a careful examination of all the available facts and circumstances and an analysis of the relevant decisions of the federal courts, we are unable to conclude as we must under the Voting Rights Act that the numbered post provision will not have a racially discriminatory effect. In our analysis we have given great weight to the factors enunciated in White v. Regester, 412 U.S. 755 (1973), and the numerous cases to which it has given rise, including the history of governmental discrimination in the area, the electoral history of the minority groups involved, the presence of racial bloc-voting, the degree of responsiveness of the elected representatives to the needs of the minority groups, the history of the policy regarding the change in

cc: Public File (Room 920)
XO554

question, and the presence of aggravating factors, such as an at-large electoral scheme. See also Zimmer v. McKeithen, 485 F.2d 1297 (5th Cir. 1973) and Graves v. Barnes, 378 F. Supp. 640 (W.D.Tex. 1974).

Under the totality of the circumstances I must on behalf of the Attorney General interpose an objection to the numbered post provision of the Texas City Charter.

Of course, the Voting Rights Act permits a jurisdiction to seek approval of changes subject to Section 5 by the United States District Court for the District of Columbia irrespective of whether the changes have been submitted to the Attorney General.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

APR 1 1 1976

Mr. L. Holt Magee
Attorney at Law
P. O. Box 1826
Monahans, Texas 79756

Dear Mr. Magee:

This is in reply to your letter of January 8, 1976, in which you submitted to the Attorney General the April 9, 1974 order of the Monahans City Council authorizing the use of numbered posts in city council elections pursuant to Section 5 of the Voting Rights Act of 1965. Your letter and the attached materials were received on January 12, 1976.

After a careful examination of all the available facts and circumstances and information received from interested citizens, we are unable to conclude, as we must under the Voting Rights Act, that the numbered post provision of Ordinance No. 667 (1974), in the content of at-large elections for the Monahans City Council, will not have a discriminatory effect on blacks and Mexican-Americans. Our information indicates that there are adjoining concentrations of blacks and Mexican-Americans in and around the "old town" of Monahans, and that there is a history of racial-ethnic bloc voting. Where these circumstances prevail, the combination of features such as the numbered post requirement with at-large elections tend to be dilutive and thus violative of the voting rights of minorities. White v. Regester, 412 U.S. 755 (1973).

Defendant's Exhibit # DE-006057

Therefore, for the foregoing reasons, on behalf of the Attorney General I must interpose an objection to the numbered post provision of Ordinance No. 667 (1974). Of course as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this provision neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race. However, until and unless such a judgment is obtained, the provision objected to is unenforceable.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

MAR 1 1 1976

Honorable Jon Lindsay
County Judge
Harris County
Family Law Center
Houston, Texas 77002

Dear Judge Lindsay:

This is in reference to your letter of March 9, 1976, in which you requested reconsideration by the Attorney General of his March 5, 1976, objection to the change in the method of selecting precinct election judges in Harris County, as prescribed in the Commissioners' Court Orders of December 8, 1975, and December 29, 1975. Your request for reconsideration was presented to us on March 10, 1976.

Pursuant to 28 C.F.R. Section 51.23, and in light of information provided by you in your March 9, 1976, letter and during a telephone conversation on that same date with Ms. Polly A. Dammann, a member of my staff, we have made a reevaluation of the 1975 Orders relating to the selection of precinct election judges. Based upon your March 9, 1976, letter, we understand that the 1975 Orders prescribe the method of selecting precinct election judges for only one term, and that for the term in question they have, in actuality, only affected the selection procedure in Commissioner Precinct No. 3. Given your written assurance that the phrase included in the December 29, 1975, Order, which reads ". . . the racial make-up of the precinct polling staff

will not be affected," was intended to reflect that no discrimination would occur by the adoption of the new policy, given your additional information that the 1975 procedure did not, in fact, adversely affect the selection of any of the three incumbent black precinct election judges in Commissioner Precinct No. 3, and given our finding that minorities are fairly represented among precinct polling staff in Commissioner Precinct No. 3, the Attorney General will not impose any further objection to your submission of January 5, 1976. The objection to your submission in my letter of March 5, 1976, is hereby withdrawn. We note, however, that should the Commissioners' Court pass an order in any subsequent years establishing the procedure for selecting precinct election judges, such order must have Section 5 preclearance prior to implemention; at the time of such a submission we must examine the purpose and the effect of the change in all commissioner's precincts.

Finally, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. We should further point out that the Attorney General has no authority to waive the 60-day period for considering a submission and, as our guidelines indicate (see 28 C.F.R. Section 51.22), we may reexamine our position on your submission should we receive additional information concerning the change in voting procedure prior to expiration of the 60-day period. Should such information warrant a change in the Attorney General's determination, you will be so advised.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

MAR 19 1976

Mr. John R. Slater
Superintendent, Orange Grove
Independent School District
Drawer L
Orange Grove, Texas 78372

Dear Mr. Slater:

This is in reference to the imposition of a numbered post requirement in the election of the School Board, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on January 19, 1976.

We have given careful consideration to the submitted change and the supporting information as well as the data compiled by the Bureau of the Census and information and comments from interested parties. On the basis of our analysis, we are unable to conclude, as we must under the Voting Rights Act, that the imposition of the numbered post voting requirement in the context of at large elections for members of the Board of Trustees with staggered terms will not have a racially discriminatory effect. Recent Supreme Court decisions, to which we feel obligated to give great weight, indicate that the combination of the above features may have the effect of abridging minority voting rights in the Orange Grove Independent School District. E.g., White v. Regester, 412 U.S. 755 (1973); Whitcomb v. Chavis, 403 U.S. 124 (1971).

For the foregoing reasons, I must on behalf of the Attorney General interpose an objection to the numbered post requirement in the context of at-large elections. Of course, Section 5 permits your seeking a declaratory judgment from the United States District Court for the District of Columbia that the change does not have the proscribed purpose or effect.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

MAR 23 1976

Mr. W. F. Leigh
Attorney at Law
Western Insurance Building
Pecos, Texas 79772

Dear Mr. Leigh:

This is in reference to the imposition of a numbered posts requirement in the election of aldermen for the Town of Pecos City, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received November 17, 1975 and completed on January 23, 1976.

We have given careful consideration to the submitted change and the supporting information as well as data compiled by the Bureau of the Census and information and comments from interested parties. On the basis of our analysis we are unable to conclude, as we must under the Voting Rights Act, that the imposition of the numbered posts voting requirement in the context of at large elections for aldermen with staggered terms will not have the proscribed discriminatory effect. Our analysis, moreover, indicates a strong possibility that racial bloc voting exists in Pecos City. Recent Supreme Court decisions, to which we feel obligated to give great weight, indicate that the combination of the above features may have the effect of abridging minority voting rights under circumstances such as exist in Pecos City. See White v. Regester, 412 U.S. 755 (1973); Whitcomb v. Chavis, 403 U.S. 124 (1971).

For the foregoing reasons, I must on behalf of the Attorney General interpose an objection to the imposition of the numbered post requirement in Pecos City. Of course, Section 5 permits your seeking a declaratory judgment from the United States District Court for the District of Columbia that the change does not have the proscribed purpose or effect. However, until such a judgment is rendered by that court, the legal effect of the objection by the Attorney General is to render the changes in question legally unenforceable.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

MAR 24 1976

Mr. Charles G. Harris
Superintendent, Chapel Hill
Independent School District
Route 7
Tyler, Texas 75701

Dear Mr. Harris:

This is in reference to the majority vote requirement for the Chapel Hill Independent School District submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965. Your submission was received on January 24, 1976. While we have noted your request for expedited consideration, we have been unable to give you an earlier response to this matter.

We have considered carefully the submitted change to majority vote requirement and the supporting information, along with Census Bureau data and information and comments from other interested parties. Our analysis reveals that the at-large election scheme for Chapel Hill Independent School District includes the use of staggered terms and designated posts and there are significant indications that racial bloc voting may exist.

Recent court decisions suggest that an at-large voting system which incorporates features such as numbered posts, staggered terms and the majority vote requirement may operate to minimize or dilute the voting strength of minority groups and thus have an

/

invidious discriminatory effect. See White v. Regester, 412 U.S. 755 (1973); Whitcomb v. Chavis, 403 U.S. 124 (1971); Zimmer v. McKeithen, 485 F.2d 1297 (5th Cir. 1973); Beer v. United States, 374 F. Supp. 363 (D.D.C. 1974). In view of these court decisions, and on the basis of all the available facts and circumstances, the Attorney General is unable to conclude, as he must under the Voting Rights Act, that the implementation of a majority vote requirement will not have a discriminatory racial effect on voting rights in the Chapel Hill Independent School District. On behalf of the Attorney General, I must interpose an objection to the submitted majority vote requirement.

Of course, Section 5 permits you to seek a declaratory judgment from the District Court for the District of Columbia that the majority vote requirement neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race. Until such a judgment is rendered by that court, however, the legal effect of the objection of the Attorney General is to render unenforceable this change in the method of electing members of the Board of Trustees, Chapel Hill Independent School District, Tyler, Texas.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

D.J. 166-012-3
X1899-1901

MAR 29 1976

Mr. John L. Love
City Secretary
City of Luling
P. O. Box 630
Luling, Texas 78648

Dear Mr. Love:

This is in response to your letter of January 23, 1976, in which you submitted to the Attorney General three changes in voting procedures in Luling, Texas, pursuant to Section 5 of the Voting Rights Act of 1965. Your letter and the attached materials were received on January 28, 1976.

The Attorney General does not interpose any objection to the following changes:

Change from commission to aldermanic form of government adopted November 13, 1973;

Change of polling place from fire station to Luling Senior High School Library adopted February 11, 1975.

However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes.

With respect to the numbered post provision adopted November 12, 1974, we have considered carefully all of the information presented by you along with pertinent Census data and information and comments received from other interested parties. On the basis of our analysis we are unable to conclude, as we must under the Voting Rights Act, that the use of numbered posts, in the context of at-large elections for the Luling City Council, will not have a discriminatory effect on blacks and Mexican-Americans.

Our analysis reveals that minority groups constitute approximately 41% of the population of Luling (25% Mexican-American; 16% black). While our information is that one black has been elected to the city council under both the prior system and the numbered post system since its inception, our analysis also has revealed significant evidence that bloc voting along racial and ethnic lines exists in Luling. Under these circumstances, recent court decisions, to which we feel obligated to give great weight, suggest that the combination of such features as designated posts and at-large elections may have the effect of abridging minority voting rights. See White v. Regester, 412 U.S. 755 (1973); Whitcomb v. Chavis, 403 U.S. 124 (1971).

Accordingly, on behalf of the Attorney General I must interpose an objection to the numbered post feature of electing city councilpersons adopted on November 12, 1974. Of course, as provided by Section 5

of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this provision neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race. However, until and unless such a judgment is obtained, the provision objected to is legally unenforceable.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

MAR 30 1976

Mr. Paul Lyle
Day, Owen, Lyle & Voss
Attorneys at Counselors
215 Skaggs Building
Plainview, Texas 79072

Dear Mr. Lyle:

This is in reference to the imposition of a majority vote and numbered post voting requirements in Board of Trustee elections for the Lockney Independent School District, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission of the numbered post provision was received on January 30, 1976, and your submission of the majority vote feature was received on March 12, 1976.

We have given careful consideration to the submitted changes and the supporting information as well as to information and comments from interested parties. On the basis of our analysis, which reveals substantial indication of racial bloc voting in the Lockney Independent School District, we are unable to conclude, as we must under the Voting Rights Act, that the imposition of the majority vote and numbered post voting requirements in the context of the at-large and staggered elections for the Board of Trustees will not have a racially discriminatory effect. Recent Supreme Court decisions, to which we feel obligated to give great weight, indicate that the combination of the above features may have the effect of abridging minority voting rights in this instance. The reasoning of these cases is illustrated by the Supreme Court's decision in

Defendant's Exhibit # DE-006070

June of 1973 which held that the multi-member election system, numerical post and majority vote requirement of Dallas and Bexar Counties, Texas, tended to abridge minority voting power and therefore violated the Fourteenth Amendment. White v. Regester, 412 U.S. 755 (1973). See also, Whitcomb v. Chavis, 403 U.S. 124 (1971).

For the foregoing reasons, therefore, I must on behalf of the Attorney General interpose an objection to the numbered post and majority vote features mentioned above. Of course, Section 5 permits your seeking a declaratory judgment from the United States District Court for the District of Columbia that the changes do not have the proscribed purpose or effect. However, until such a judgment is rendered by that court, the legal effect of the objection by the Attorney General is to render the changes in question legally unenforceable.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

APR 2 1976

Mr. James M. Parker
City Attorney
City of San Antonio
Post Office Box 9066
San Antonio, Texas 78285

Dear Mr. Parker:

This is in reference to the November, 1974, City Charter Amendments, changes in City designated polling places, and 23 annexations to the City of San Antonio, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on February 2, 1976.

The Attorney General does not interpose any objections to the polling place changes or the City Charter Amendments. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of these changes.

In examining the annexations submitted under Section 5 of the Voting Rights Act, it is incumbent for the Attorney General to determine whether the annexations, either in purpose or effect, result in voting discrimination against racial or language minorities. Our proper concern is not with the validity of the annexations as such but with the changes in voting which proceed from them.

With respect to San Antonio specifically, we note that the population of the City prior to the annexations here under submission, in November, 1972, was 53.1% Mexican-American, 38% white-Anglo, and 8.8% black and other races. The City's nine-member governing council is elected at-large, with numbered posts and a majority requirement. In November of 1974, a proposition to amend the City Charter to provide for a system of ward representation was defeated by the City electorate. However, our examination of election results by precincts indicates the proposition was favored overwhelmingly in predominantly Mexican-American and black precincts.

Facts available to us show that the annexations under submission expanded the City by 65 square miles (a 25% increase) and 51,417 persons, approximately three-fourths of whom were white-Anglo. The enlarged City is 51.1% Mexican-American, 40.4% white-Anglo, and 8.5% black and other races. Thus, after the addition of the substantial and predominantly white-Anglo population involved in several of these 23 annexations the proportional strength of Mexican-Americans necessarily has been reduced, even though Mexican-Americans still are a bare majority of the population. It is our understanding that the present City Council is composed of two Mexican-American members, one black, and six white-Anglos.

We have considered carefully all the information submitted, along with pertinent Census data and information and comments from other interested parties. On the basis of our review, the Attorney General will not object to 10 of the annexations submitted. 1/ As to

1/Annexations nos. 224, 225, 233, 234, 235, 236, 238, 239, 240 and 242.

these our analysis shows that they involve uninhabited areas or populations the effect of which would be de minmus or not adverse to minority voting strength. However, with regard to the other 13 annexations 2/ we cannot conclude, as we must under the Voting Rights Act, that they, when coupled with an at-large, majority vote, numbered post system of City elections, in which racial-ethnic bloc voting exists, do not have the effect of abridging the right to vote of affected minorities in San Antonio. Cf. City of Richmond v. United States, 376 F. Supp. 1344 (D. D.C. 1974), 422 U.S. 358 (1965). City of Petersburg v. United States, 354 F. Supp. 1021 (D.D.C. 1972), aff'd 410 U.S. 962 (1973). Accordingly, I must, on behalf of the Attorney General, interpose an objection to those 13 annexations.

I would emphasize that this objection relates only to the voting changes occasioned by the annexations. As the Court in the Richmond and Petersburg cases, supra, have indicated, one way to remedy this situation would be to adopt a system of fairly drawn single-member wards. Should that occur the Attorney General will reconsider the matter upon receipt of that information.

Of course, as provided by Section 5, you have an alternative of instituting an action in the United States District Court for the District of Columbia for a declaratory judgment that the annexations do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color or in contravention of the guarantees set forth in Section 4(f)(2) of the Voting Rights Act.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

2/Annexations nos. 220, 221, 222, 223, 226, 227, 228, 229, 230, 231, 232, 237, and 241.

APR 9 1976

Honorable Joseph B. Bumgardner
County Judge
County of Victoria
Victoria County Courthouse Building
Victoria, Texas 77901

Dear Judge Bumgardner:

This is in reference to the pending election pertaining to a proposed consolidation between the Victoria Independent School District and the Mission Valley Independent School District in Victoria County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on February 2, 1976.

In examining the proposed consolidation, under Section 5 of the Voting Rights Act, it is incumbent on the Attorney General to determine whether the proposed change, either in purpose or effect, may result in racial or language minority group discrimination in voting. In making this evaluation we apply the legal principles which the courts have developed in the same or analogous situations. Moreover, it is also significant that Section 5 only prohibits implementation of changes affecting voting and provides that such changes may not be enforced without receiving prior approval by the Attorney General or by the District Court for the District of Columbia. Our proper concern

then is not with the validity of the proposed consolidation but with the changes in voting which proceed from it.

After a careful examination of the submitted change, including consideration of demographic and geographic data, and comments from interested parties, we cannot conclude, as we must under the Voting Rights Act, that the proposed consolidation will not have a discriminatory effect on either the Mexican-American or black communities in the Victoria Independent School District. According to the data we examined the Mission Valley Independent School District is predominantly white (Anglo) in population with a 7% Mexican-American population and a 4% black population. The Victoria Independent School District, by contrast, contains a 36% Mexican-American population and a 9% black population. Our information regarding elections in the Victoria Independent School District demonstrates that the school district elects its board of trustees at-large to seven numbered posts, and that there is a likelihood of racial ethnic bloc voting. Moreover, the information we examined indicates that the major portion of the black and Mexican-American population is located within the City of Victoria in cognizable residential areas.

Under the procedural guidelines for the administration of Section 5 the burden of proving that changes affecting voting have not had or will not have the purpose or effect of discriminating against racial or language minority groups lies with the submitting authority. 28 C.F.R. 51.19; Georgia v. United States, 411 U.S. 526 (1973). Under the circumstances described above, commensurate with our guidelines we cannot conclude that the proposed

consolidation, in the context of an at-large, numbered post election system, will not have a dilutive effect on the voting strength of blacks and Mexican-Americans in the Victoria Independent School District. Therefore, on behalf of the Attorney General, I must interpose an objection to the consolidation of the Victoria and Mission Independent School Districts.

While we are not aware of any court decision dealing specifically with a consolidation of this type, cases dealing with annexations are particularly pertinent since the change in voting effected in both cases is the same, i.e., an alteration of a particular electorate. Supreme Court decisions which have considered the racially dilutive effect of annexations under Section 5 of the Voting Rights Act have held that such annexations can be approved only on the condition that modifications calculated to neutralize to the extent possible any adverse effect upon the minority voters are adopted, such as a shift from an at-large election system to a single member district election system. City of Richmond v. United States, 422 U.S. 358 (1975); City of Petersburg v. United States, 410 U.S. 962 (1973). In this connection, should the Victoria School District undertake to elect its board of trustees from single member districts the Attorney General will reconsider his determination in this matter. We note that it is our understanding that the establishment of single member districts in the Victoria Independent School District has been a topic of discussion in the past.

As set out in the Section 5 guidelines, 28 C.F.R. 51.23 and 51.24, we will examine any information not previously available to you in support of a request to reconsider the objection interposed above, including such information as the results of any studies or other documentation regarding the feasibility of creating single member districts in the Victoria Independent School District.

Of course, as provided by Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed consolidation has neither the purpose nor effect of denying or abridging the right to vote on account of race or color.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

APR 19 1976

Mr. Howard Guy
Business Manager
Liberty Independent
School District
P.O. Box 312
Liberty, Texas 77575

Dear Mr. Guy:

This is in reference to the imposition of a numbered post system with a majority requirement, the change and addition of polling places, and bilingual procedures for the April 3, 1976 election for Liberty Independent School District, Liberty County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on February 19, 1976. Although we noted your request for expedited consideration, we were unable to comply.

The Attorney General does not interpose any objections to the change and addition of polling places, and bilingual procedures for the April 3, 1976 election. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes.

It was noted during our evaluation of this matter that there are few, if any, persons in Liberty Independent School District whose participation in the electoral process would be made more effective by the provision of bilingual materials. Please be advised that under Section 55.13(d) of our Interim

Guidelines Regarding Language Minority Groups, a copy of which is enclosed, Liberty Independent School District may comply with the minority language requirements of the Act by providing less than a complete distribution of bilingual materials as long as such materials are provided to language minority group members who would benefit from receiving them.

In regard to the addition of the majority vote and numbered post voting requirements to the at large election of School Board members, after carefully examining this change with supporting information and comments from interested parties, as well as analysis of recent court decisions, we are unable to conclude, as we must under the Voting Rights Act, that this change will not have a racially discriminatory effect. Our analysis reveals that Blacks constitute a substantial proportion of the population of the Liberty Independent School District and that bloc voting along racial lines may exist. Under such circumstances, recent Supreme Court decisions, to which we feel obligated to give great weight, indicate that the combination of the above features would have the effect of abridging minority voting rights. The reasoning of these recent cases is illustrated by the Supreme Court's decision in June of 1973 which held that the multi-member election system, numerical post and majority vote requirement of Dallas and Bexar Counties, Texas, tended to abridge minority voting power and therefore violated the Fourteenth Amendment. White v. Regester, 412 U.S. 755 (1973). See also, Whitcomb v. Chavis, 403 U.S. 124 (1971).

For the foregoing reasons, I must on behalf of the Attorney General interpose an objection to the numbered post and majority vote features in the context of at large elections. Of course, Section 5 permits seeking approval of all changes affecting voting by the United States District Court for the District

of Columbia [illegible] of whether the changes have previously been submitted to the Attorney General. However, until such a judgment is rendered by that court, the legal effect of the objection by the Attorney General is to render the changes in question legally unenforceable.

Please advise us within 10 days of the steps that you intend to take to comply with this decision.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

MAY 5 1976

Mr. Jack Schulze
Superintendent, Pettus
Independent School District
Post Office Box 16
Pettus, Texas 78146

Dear Mr. Schulze:

This is in reference to the imposition of a numbered post provision and the bilingual election procedures for the Pettus Independent School District, Bee County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on March 6, 1976.

The Attorney General does not interpose any objection to the bilingual election procedures for the Pettus Independent School District. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change.

In regard to the addition of the numbered post voting requirement to the at-large election of school board members, after carefully examining this change with supporting information and comments from interested parties, as well as analysis of recent court decisions, we are unable to conclude, as we must under the Voting

Rights Act, that the imposition of the numbered post requirement in the context of the at-large election system for the school board will not have a racially discriminatory effect. Our analysis reveals that Mexican-Americans constitute a substantial proportion of the population of the Pettus Independent School District and that there are significant indications that bloc voting along ethnic lines exist. Under such circumstances, recent Supreme Court decisions, to which we feel obligated to give great weight, indicate that the combination of the above features would have the effect of abridging minority voting rights. In our analysis we have given careful scrutiny to the factors enunciated in White v. Regester, 412 U.S. 755 (1973) and its progeny. See, also, Zimmer v. McKeithen, 485 F.2d 1297 (5th Cir. 1973) and Graves v. Barnes, 378 F. Supp. 640 (W.D. Tex. 1974).

For the foregoing reasons, I must on behalf of the Attorney General interpose an objection to the imposition of the numbered post feature for electing school board members in the Pettus Independent School District. Of course, Section 5 permits seeking approval of all changes affecting voting by the United States District Court for the District of Columbia irrespective of whether the changes have previously been submitted to the Attorney General. However, until such a judgment is rendered by that court, the legal effect of the objection by the Attorney General is to render the change in question legally unenforceable.

Please advise us within 20 days of the steps that you intend to take to comply with this decision.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

Washington, D.C. 20530

11 MAY 1976

Mr. Alan C. Fielder
City Attorney
119 South Main
Lockhart, Texas 78644

Dear Mr. Fielder:

This is in reference to the bilingual procedures, deletion of the property requirement for voting, change in election date, and majority vote requirement for election to the city council in the City of Lockhart, Caldwell County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on March 12, 1976.

The Attorney General does not interpose any objection to the bilingual procedures, deletion of property requirement, and the change in election date. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes.

We have considered carefully the submitted change to majority vote requirement and the supporting information, along with Census Bureau data and information and comments from other interested parties. Our analysis reveals that the at-large election scheme for the City of Lockhart includes the use of staggered terms and designated posts and there are indications that racial bloc voting may exist.

Recent court decisions suggest that an at-large voting system which incorporates features such as numbered posts, staggered terms and the majority vote requirement may operate to minimize or dilute the voting strength of minority groups and thus have an invidious discriminatory effect. See White v. Regester, 412 U.S. 755 (1973); Whitcomb v. Chavis, 403 U.S. 124 (1971). In view of these court decisions, and on the basis of all the available facts and circumstances, the Attorney General is unable to conclude, as he must under the Voting Rights Act, that the implementation of a majority vote requirement will not have a discriminatory racial effect on voting rights in the City of Lockhart. On behalf of the Attorney General, I must interpose an objection to the submitted majority vote requirement.

Of course, Section 5 permits you to seek a declaratory judgment from the District Court for the District of Columbia that the majority vote requirement neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race. Until such a judgment is rendered by that court, however, the legal effect of the objection of the Attorney General is to render unenforceable this change in the method of electing members of the City Council of Lockhart.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

May 17, 1976

Honorable Morris Hassell
Mayor, City of Rusk
Rusk, Texas 75785

Dear Mayor Hassell:

This is in reference to the adoption of the place system for Aldermanic elections of the City of Rusk, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on March 19, 1976.

After a careful examination of all of the available facts and circumstances and an analysis of the relevant decisions of the federal courts, we are unable to conclude, as we must under the Voting Rights Act, that the place system will not have a racially discriminatory effect. In our analysis we have considered the factors enunciated in White v. Regester, 412 U.S. 755 (1973), and other cases to which it has given rise, including the history of governmental discrimination in the area, the presence of racial bloc voting, the degree of responsiveness of the elected representatives to the needs of the minority community, and the existence of an at-large electoral scheme. See also Graves v. Barnes, 378 F. Supp. 640 (W.D. Tex. 1974).

Under the totality of the circumstances I must on behalf of the Attorney General interpose an objection to the place system for Aldermanic elections of the City of Rusk.

cc: Public File
X5255

Of course, the Voting Rights Act permits a jurisdiction to seek the approval of changes subject to Section 5 by the United States District Court for the District of Columbia irrespective of whether the changes have been submitted to the Attorney General.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

Honorable Morris Bassell
Mayor, City of Rusk
Rusk, Texas 75785

Dear Mayor Bassell:

This is in reference to the adoption of the place system for Aldermanic elections of the City of Rusk, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on March 19, 1976.

After a careful examination of all of the available facts and circumstances and an analysis of the relevant decisions of the federal courts, we are unable to conclude, as we must under the Voting Rights Act, that the place system will not have a racially discriminatory effect. In our analysis we have considered the factors enunciated in White v. Regester, 412 U.S. 755 (1973), and other cases to which it has given rise, including the history of governmental discrimination in the area, the presence of racial bloc voting, the degree of responsiveness of the elected representatives to the needs of the minority community, and the existence of an at-large electoral scheme. See also Graves v. Barnes, 378 F. Supp. 640 (W.D. Tex. 1974).

Under the totality of the circumstances I must on behalf of the Attorney General interpose an objection to the place system for Aldermanic elections of the City of Rusk.

Of course, the Voting Rights Act permits a jurisdiction to seek approval of changes subject to section 5 by the United States District Court for the District of Columbia irrespective of whether the changes have been submitted to the Attorney General.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

DJ 166-012-3
X1770

MAY 21 1976

Mr. R. L. Burton
Superintendent
Trinity Independent School District
Trinity, Texas 75862

Dear Mr. Burton:

This is in reference to the change to a numbered post provision for the election of the Board of Trustees of Trinity Independent School District, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on March 22, 1976.

We have given careful consideration to the information furnished by you. On the basis of our analysis, we are unable to conclude, as we must under the Voting Rights Act, that the use of numbered posts will not have a racially discriminatory effect in the conduct of elections in Trinity Independent School District.

Our analysis reveals that blacks constitute a substantial proportion of the population of Trinity Independent School District and that bloc voting along racial lines may exist. Under these circumstances, recent court decisions, to which we feel obligated to give great weight, suggest that the combination of such features as designated posts and at-large elections have the potential for abridging minority voting rights. See White v. Regester, 412 U.S. 755 (1973); Whitcomb v. Chavis, 403 U.S. 124 (1971).

Accordingly, on behalf of the Attorney General I must interpose an objection to the implementation of the numbered post provision of electing the Board of Trustees for Trinity Independent School District. Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race. Until such judgment is rendered by that Court, however, the legal effect of the objection by the Attorney General is to make the change in question legally unenforceable.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

DJ 166-012-3
X5431

MAY 24 1976

Mr. Richard A. Green
Witherspoon, Aikin, Langley
Woods & Gulley
Attorneys for the Hereford
Independent School District
140 East Third Street
Hereford, Texas 79045

Dear Mr. Green:

This is in reference to the adoption of bilingual election procedures, the change in polling place, the designation of election by place, and the adoption of a majority vote requirement by the Hereford Independent School District, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on March 24, 1976.

The Attorney General does not interpose an objection to the bilingual election procedures adopted by the District. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change.

The Attorney General will make no determination with regard to the change in polling place since this change was made prior to November 1, 1972 and is therefore not subject to the preclearance requirements of Section 5.

With respect to the designation of election by place and the majority vote requirement, we have given careful consideration to the materials and information you have submitted as well as information and comments from other interested parties. We have noted particularly the growing minority population of the district, the electoral history of the district, the increase in minority political activity, the lack of any minority representation on the Board of Trustees of the district, and the fact that these features would be added to an at-large election system.

The place system in effect creates separate offices and permits each voter to vote for only one candidate in each place. In the context of an at-large electoral system, and other circumstances as they affect the electoral process in the Hereford Independent School District, the opportunity for minority voters to elect a representative of their choice to the School Board is significantly lessened by the addition of the numbered place requirement. As one court decision indicates:

> In a true at large election, if the majority spreads its votes around and the minority single shot votes, the minority strength is concentrated, thus increasing their chance of electing. However, if the minority candidate is forced to run against a specific candidate for a specific seat, the majority can readily identify for whom they must vote in order to defeat the minority candidate.

Lucas v. Scott, 334 F. Supp. 230, 213, n. 9 (N.D. S.C. 1971). The majority vote requirement exacerbates this problem, by preventing a minority candidate who receives a plurality against two or more majority candidates from being elected without facing a run-off election against a single majority candidate.

For these reasons, the Attorney General has interposed objections under Section 5 of the Voting Rights Act to numbered place systems and majority requirements in a number of other similar jurisdictions, and we are unable to conclude, as we must under the Voting Rights Act, that the numbered place and majority vote requirements in the Hereford Independent School District will not have the effect of discriminating on account of race, color, or membership in a language minority group. Therefore, on behalf of the Attorney General, I must interpose an objection under Section 5. However, as the law provides, a declaratory judgment that this change does not have the proscribed purpose or effect may be sought in the United States District Court for the District of Columbia notwithstanding this objection.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

JUN 1 1976

Mr. L. Holt Magee
Attorney at Law
P. O. Box 1626
Monahans, Texas 79756

Dear Mr. Magee:

This is in reply to your letter of March 17, 1976, in which you requested reconsideration by the Attorney General of his March 11, 1976, objection to Ordinance No. 667 (1974) of the City of Monahans instituting numbered posts for city council elections. Your request for reconsideration was received by this Department on March 22, 1976. We are also in receipt of election results of 1968 county commissioner elections and six affidavits which were presented to Mr. Kieckhefer at your conference with him at the Office of the United States Attorney in San Antonio on March 30, 1976.

We have carefully examined the material which you have presented and concluded that the premise upon which we based our original objection, i.e., ethnic bloc voting, does not appear to be as prevalent as we originally determined. While the evidence is not demonstrably clear one way or the other, there appear to be instances where bloc voting did not occur. Accordingly and pursuant to the reconsideration guidelines promulgated for the administration of Section 5, 28 C.F.R. 51.23 through 51.25, the objection interposed to Ordinance No. 667 (1974) in my letter of March 11, 1976, is hereby withdrawn. However, we feel a responsibility to point out that Section 5 of the

Defendant's Exhibit # DE-006095

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Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

JUN 1 1976

Mr. L. Holt Hagan
Attorney at Law
P. O. Box 1826
Henderson, Texas 75756

Dear Mr. Hagan:

This is in reply to your letter of March 17, 1976, in which you requested reconsideration by the Attorney General of his March 11, 1976, objection to Ordinance No. 667 (1974) of the City of Henderson instituting numbered posts for city council elections. Your request for reconsideration was received by this Department on March 22, 1976. We are also in receipt of election results of 1966 county commissioner elections and six affidavits which were presented to Mr. Kleinhaber at your conference with him at the Office of the United States Attorney in San Antonio on March 30, 1976.

We have carefully examined the material which you have presented and concluded that the premise upon which we based our original objection, i.e. ethnic bloc voting, does not appear to be as prevalent as we originally determined. While the evidence is not demonstrably clear one way or the other, there appear to be instances where bloc voting did not occur. Accordingly and pursuant to the reconsideration guidelines promulgated for the administration of Section 5, 28 C.F.R. 51.20 through 51.25, the objection interposed to Ordinance No. 667 (1974) in my letter of March 11, 1976, is hereby withdrawn. However, we feel a responsibility to point out that Section 5 of the

cc: Public File
X1277

Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

Office of the Attorney General
Washington, D. C. 20530

D.J. 166-012-3
X0567-0588

July 15, 1976

Seagal V. Wheatley, Esq.
Oppenheimer, Rosenberg,
Kelleher & Wheatley
Attorneys at Law
Suite 620
711 Navarro
San Antonio, Texas 78205

Dear Mr. Wheatley:

This is in reference to the request of the City of San Antonio for reconsideration of the objections interposed on April 2, 1976, to 13 annexations, pursuant to Section 5 of the Voting Rights Act of 1965, as amended.

I have given careful and personal review to the materials provided by the city attorney and you in your letters and in our meeting with Mayor Cockrell, Congressman Krueger and others on June 22, 1976.

The Voting Rights Act, as interpreted by the Supreme Court, places on a covered jurisdiction such as San Antonio the special burden of proving that changes which affect voting do not have a discriminatory purpose or effect. I have found no basis for concluding that the annexations in question were purposefully dilutive of protected minority voting rights. However, I am not able to conclude that the annexations in question do not have the proscribed effect on the voting rights of Mexican-Americans in San Antonio. In this connection I have had to keep in mind the opinion of the Supreme Court in White v. Regester, 412 U.S.755 (1973), which left standing the 1972 three-judge District Court ruling invalidating multimember districts in Bexar County and which refers to the District Court's assessment of the various factors involved. Were this a standard constitutional challenge to the annexations, one might well reach a contrary conclusion. Because the burden of proof imposed by Congress in the Voting Rights Act

rests with the covered jurisdiction to show that there is no effect, and requires me to object in the absence of such a showing, I am obliged to continue the objections previously interposed.

In establishing a method for prompt review of voting changes by the Attorney General, the Voting Rights Act recognized that there would be disagreements with the Attorney General's view of the law and provided that a jurisdiction may test its correctness in legal proceedings. I was most impressed by Mayor Cockrell's presentation of the significance of these annexations to the City of San Antonio and would, of course, understand if the city desired to contest this determination. Should you decide not to seek such review, however, I am sure that Assistant Attorney General Pottinger and his staff will assist the city in seeking the most sensible way to formulate a transitional remedy which meets the congressional purposes.

I earnestly hope that the matter can be resolved to the mutual satisfaction of all concerned.

Sincerely,

Edward H. Levi
Attorney General

JUL 29 1976

Mr. Russell R. Murphy
Assistant Superintendent
Marshall Independent School
District
Marshall, Texas 75670

Dear Mr. Murphy:

This is in reference to the change to a majority vote requirement for election to the Board of Trustees for Marshall Independent School District, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on May 31, 1976.

We have given careful consideration to the information furnished by you as well as Bureau of the Census data and information and comments from interested parties. On the basis of our analysis we are unable to conclude, as we must under the Voting Rights Act, that the imposition of a majority vote requirement will not have a racially discriminatory effect in the conduct of elections in Marshall Independent School District.

Our analysis reveals that blacks constitute a substantial proportion of the population of Marshall Independent School District and that bloc voting along racial lines may exist. Under these circumstances, recent court decisions, to which we

feel obligated to give great weight, indicate that a majority vote requirement in the context of at-large elections has the potential for abridging minority voting rights. See White v. Regester, 412 U.S. 755 (1973); Whitcomb v. Chavis, 403 U.S. 124 (1971).

Accordingly, on behalf of the Attorney General, I must interpose an objection to the implementation of majority vote requirement for election to the Board of Trustees for Marshall Independent School District. Of course as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. Until such judgment is rendered by that Court, however, the legal effect of the objection by the Attorney General is to make the change in question legally unenforceable.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

JSP:YL:rjs
DJ 166-012-3
X5014-5015

AUG 2 1976

Mr. James Mason
Superintendent
Hawkins Independent School
District
Post Office Drawer L
Hawkins, Texas 75765

Dear Mr. Mason:

This is in reference to the change to a numbered post provision and majority vote requirement for the election of the Board of Trustees of Hawkins Independent School District, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on June 3, 1976.

We have given careful consideration to the information furnished by you. On the basis of our analysis and comments from interested parties, as well as analysis of recent court decisions, we are unable to conclude, as we must under the Voting Rights Act, that the numbered post provision and the majority vote requirement will not have a racially discriminatory effect. Our analysis reveals that blacks constitute a substantial proportion of the population of the Hawkins Independent School District and that bloc voting along racial lines may exist. Under these circumstances, recent Supreme Court decisions, to which we feel obligated to give great weight, indicate that the combination of the above features may have the effect of abridging minority voting rights. See White v. Regester, 412 U.S. 755 (1973); Whitcomb v. Chavis, 403 U.S. 124 (1971).

Defendant's Exhibit # DE-006103

Accordingly, on behalf of the Attorney General I must interpose an objection to the implementation of numbered post and majority vote requirement of electing the Board of Trustees for Hawkins Independent School District. Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the District Court for the District of Columbia that these changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race. Until such judgment is rendered by that Court, however, the effect of the objection by the Attorney General is to make the changes in question legally unenforceable.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

Mr. James L. Bailey
Superintendent
Midland Independent School
District
702 North L. Street
Midland, Texas 79701

AUG 6 1976

Dear Mr. Bailey:

This is in reference to the change to numbered post and majority vote requirements for the election of the Board of Trustees of the Midland Independent School District, Midland, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on June 7, 1976.

We have given careful consideration to the information furnished by you and to comments from interested parties. On the basis of our analysis of this information and of relevant judicial decisions, we are unable to conclude, as we must under the Voting Rights Act, that these requirements will not have a discriminatory effect on the basis of race, color, or membership in a language minority group. In this regard, we have noted the stated purpose of the numbered post requirement to prevent single shot voting and that racial bloc voting appears to exist in the district (see Kirkston v. Scott, 336 F. Supp 206, 213 n. 9 (E.D.N.C. 1972)).

Accordingly, on behalf of the Attorney General, I must interpose an objection to the implementation of the numbered posts and majority vote requirements for the election of the Board of Trustees of Midland Independent School District. I note that although the evidence with regard to racial bloc voting is, to some extent, conflicting, the procedural guidelines for the administration of Section 5 provide, "If the evidence as to the purpose or effect of the change is conflicting, and the Attorney General is unable to resolve the conflict within the 60 day period, he shall, consistent with the above-described burden of proof applicable in the District Court, enter an objection and so notify the submitting authority." 28 C.F.R. 51.19.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the District Court for the District of Columbia that these changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. Until such judgment is rendered by the Court, however, the effect of the objection by the Attorney General is to make the changes in question legally unenforceable.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

JSP:RAC:aaf
DJ 166-012-3
X7305

12 NOV 1976

Mr. Josiah Wheat
City Attorney
Box 517
Woodville, Texas 75979

Dear Mr. Wheat:

This is in reference to the change to a numbered place system for alderman elections in the City of Woodville, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on September 13, 1976.

We have given careful consideration to the materials and information you have submitted as well as information and comments from other interested parties. We have noted particularly, the electoral history in the City of Woodville, the increase in minority political activity, the lack of any black representation on the City Council and the fact that the numbered place system would be added to an at-large election system.

The place system in effect creates separate offices and permits each voter to vote for only one candidate in each place. In the context of an at-large electoral system, and other factors as they affect the electoral process in the City of Woodville, the opportunity for black voters to elect a representative of their choice to the City Council is significantly lessened by the addition of the numbered place requirement. See Dunston v. Scott, 336 F. Supp. 206, 213 n.9 (E.D.N.C. 1972).

Defendant's Exhibit # DE-006107

For these reasons, the Attorney General has interposed objections under Section 5 of the Voting Rights Act to numbered place systems in a number of other similar jurisdictions. We are unable to conclude, as we must under the Voting Rights Act, that the addition of the numbered place feature to the election method of the City Council in the City of Woodville will not have the effect of discriminating on account of race or color. Therefore, on behalf of the Attorney General, I must interpose an objection under Section 5.

Of course, as provided by Section 5 of the Voting Rights Act, you have the alternative of instituting an action in the United States District Court for the District of Columbia seeking a declaratory judgment that the change to a numbered post system does not have the purpose and will not have the effect of denying or abridging the right to vote to members of a minority group based on race or color. However, until and unless such a judgment is obtained, the change to a numbered place system for alderman elections in the City of Woodville, Texas, is legally unenforceable.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

JSP:JPT:JKT:wmd:vm
DJ 166-012-3
X9082, 9242-9245

Mr. Joel B. Coolidge, President
Interim Board of Trustees
Proposed Westheimer Independent
School District
Suite 800, 777 South Post Oak Blvd.
Houston, Texas 77056

Dear Mr. Coolidge:

This is in reference to the January 15, 1977, special election implementing a new governmental body, the Westheimer Independent School District of Harris County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on December 17, 1976. In accordance with your request expedited consideration has been given this submission pursuant to the procedural guidelines for the administration of Section 5 (28 C.F.R. Section 51.22).

We have given careful consideration to the materials and information you have submitted, as well as information and comments from other interested parties. We have given particular attention to the relative potential for minority members in the affected area to achieve adequate representation in school affairs under the status quo and under the proposed change. In the course of our review, we have received comments from interested persons alleging that one of the reasons for the proposal to create the Westheimer District was to separate the predominately white-anglo Westheimer area from the HISD because of the emerging minority political influence on the HISD board. Such comments point out that the Westheimer district was first proposed shortly after the 1969 HISD elections where minority-backed candidates first gained control of the board and shortly after the HISD had been ordered to undertake substantial

school desegregation. The materials which accompany your submission do not refute such allegations. In addition it appears that minority residents in the proposed Westheimer district will have no realistic opportunity to achieve the sort of representation in the proposed Westheimer Independent School District that they now enjoy in the Houston Independent School District. Finally, minority parents in the Houston Independent School District whose children, in order to enjoy the benefits of a desegregated education, attend schools located in what would be the Westheimer Independent School District would be disfranchised with respect to all matters relating to the education of their children.

For the above reasons, therefore, we are unable to conclude, as we must under the Voting Rights Act, that the submitting authority has met its burden of showing that the proposed change does not have the purpose and will not have the effect of discriminating on account of race or membership in a language minority group. Consequently, I must on behalf of the Attorney General interpose an objection to the January 15, 1977, special election implementing a new governmental body, the Westheimer Independent School District.

The effect of this objection is to make the election legally unenforceable. Of course, the Voting Rights Act provides that a declaratory judgment that this change does not have the proscribed purpose or effect may be sought in the United States District Court for the District of Columbia notwithstanding this objection.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

DJ 166-012-3
X0567-X0588

Mr. James M. Parker
City Attorney
City of San Antonio
200 Main Plaza, Suite #103
San Antonio, Texas 78205

Dear Mr. Parker:

This is in reference to your request for reconsideration of the objection to the annexations by the City of San Antonio, Texas, interposed by the Attorney General on April 2, 1976, pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your request was received on January 17, 1977. In accordance with your request expedited consideration has been given this submission pursuant to the procedural guidelines for the administration of Section 5 (28 C.F.R. Section 51.22).

In a referendum election on January 15, 1977, the electors of the City of San Antonio gave final approval to a plan for the election of members of the city council from single-member districts. Because the adoption of this plan remedies the adverse effect on minority voting strength caused by the annexations, I hereby, on behalf of the Attorney General, withdraw the objection.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

25 FEB 1977

Mr. Tanner T. Hunt, Jr.
Attorney for the South Park
Independent School District
P. O. Box 3708
Beaumont, Texas 77704

Dear Mr. Hunt:

This is in reference to the change to election by position for the Board of Trustees of South Park Independent School District, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on December 28, 1976.

We have given careful consideration to the information furnished by you as well as information and comments from interested parties. Our analysis reveals that blacks constitute a substantial proportion of the population of South Park Independent School District and that bloc voting along racial lines may exist. Under these circumstances, recent court decisions, to which we feel obligated to give great weight, suggest that the combination of such features as numbered positions and at-large elections have the potential for abridging minority voting rights. See White v. Regester, 412 U.S. 755 (1973); Whitcomb v. Chavis, 403 U.S. 124 (1971).

On the basis of our analysis, we are unable to conclude, as we must under the Voting Rights Act, that this change will not have a racially discriminatory effect on the conduct of elections in South Park

Independent School District. Accordingly, on behalf of the Attorney General I must interpose an objection to the implementation of the change to electing the Board of Trustees of South Park Independent School District by designated position.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race. Until such judgment is rendered by that Court, however, the legal effect is to make the change in question unenforceable.

Sincerely,

DREW S. DAYS, III
Acting Assistant Attorney General
Civil Rights Division

Mr. W. G. Norton
President, Board of Trustees
Somerset Independent School
District Post Office Box 278
Somerset, Texas 78069

MAR 17 1977

Dear Mr. Norton:

This is in reference to the imposition of a place system and the bilingual election procedures for the April 2, 1977 election for the Somerset Independent School District, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on January 17, 1977. Although we noted your request for expedited consideration, we were unable to comply.

The Attorney General does not interpose an objection to the bilingual procedures for the April 2, 1977 election. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change.

In regard to the addition of the place system to the at-large election of school board members, we have made a careful examination of the information you provided and comments from interested parties, as well as recent court decisions. Our analysis reveals that Mexican-Americans constitute a substantial proportion of the population of the Somerset Independent School District and that there are indications that bloc voting along ethnic lines exists. Under such circumstances, recent Supreme Court decisions, to which we feel obligated to give great weight, indicate that the combination of the above features would have the effect of abridging minority voting rights. See White v. Regester, 412 U.S. 755 (1973), and Beer v. United States, 425 U.S. 130 (1976); see also Zimmer v. McKeithen, 485 F. 2d 1297 (5th Cir. 1973), affirmed on other grounds sub nom. East Carroll Parish School Board v. Marshall, 424 U.S. 636 (1976) and Graves v. Barnes, 378 F. Supp. 640 (W.D. Tex. 1974).

On the basis of our examination, we are unable to conclude, as we must under the Voting Rights Act, that the imposition of the place system in the context of the at-large election system for the school board will not have a discriminatory effect on the basis of race, color, or membership in a language minority group.

Accordingly, I must on behalf of the Attorney General interpose an objection of the imposition of the place system for electing school board members in the Somerset Independent School District.

Of course, Section 5 permits your seeking a declaratory judgment in the United States District Court for the District of Columbia that the change does not have the proscribed purpose or effect irrespective of whether the changes have previously been submitted to the Attorney General. However, until such a judgment is rendered by that Court, the legal effect of the objection by the Attorney General is to render the change in question legally unenforceable.

Please advise us within 10 days of the steps that you intend to take to comply with this decision.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division